In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-549

TONY GIAMO,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

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Miami, Florida

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STATE OF FLORIDA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Petitioner prays that a Writ of Certiorari issue to the District Court of Appeal of Florida, Third District to review the Opinion of that Court affirming his conviction.

OPINIONS BELOW

The Petitioners Judgment of Conviction in the Criminal Court of Record in and for Dade County, Florida, printed as Appendix A hereto. was appealed to the District Court of Appeal of Florida, Third District, and was affirmed by that Court on February 16, 1971 with Opinion reported 245 So.2 116 (3 DCA Fla. 1971) and printed as Appendix B hereto. The District Court denied a Petition for Rehearing by unreported order dated March 26, 1971, which order is printed as Appendix C hereto. A Petition for Writ of Certiorari filed in the Supreme Court of Florida on April 9, 1971 was discharged by an Unreported Order printed as Appendix D hereto after that Court had taken jurisdiction for the purpose of determining its substantive jurisdiction over the cause under a rule staying all proceedings therein until that Court had ruled. Florida Appellate Rule 4, 5(c)(6), pertinent part printed as Appendix E hereto; see *Sun Ins. Co. vs. Boyd*, 105 So.2 574 (Fla. 1958). The Supreme Court of Florida denied a Petition for Rehearing on the 4th of August, 1971, by Order printed as Appendix F hereto.

GROUNDS FOR JURISDICTION HERE

Jurisdiction in this Court is asserted under Title 28 U.S.C. §1257(3). State Court action became final on August 4, 1971, the date upon which rehearing was denied by the Florida Supreme Court.

QUESTIONS PRESENTED FOR REVIEW

1) WHERE PETITIONER WAS CHARGED WITH AN OFFENSE LAID ON A DATE CERTAIN IN THE INFORMATION, BUT EVIDENCE WAS ADMITTED (OVER OBJECTION) AS TO OTHER OFFENSES ON OTHER DAYS AND THE CASE SENT TO THE JURY IS PETITIONER DEPRIVED OF HIS RIGHT TO BE FACED WITH AND DEFEND A SPECIFIC CHARGE AGAINST HIM?

2) DOES A STATEMENT BY THE PROSECUTION IN CLOSING ARGUMENT THAT 23 PEOPLE ON THE GRAND JURY BELIEVED THE PROSECUTING WITNESS WHEN THEY RETURNED THE INDICTMENT AGAINST PETITIONER DEPRIVE PETITIONER OF HIS RIGHT TO CONFRONT THE WITNESSES AGAINST HIM?

3) DOES A STATEMENT BY THE PROSECUTOR IN CLOSING ARGUMENT THAT "IF WE HADN'T PROVEN A CASE, WE WOULDN'T BE HERE" BECAUSE THE DEFENSE MOVED TO DISMISS AND THE JUDGE DENIED THE MOTION CONSTITUTE A CONSTITUTIONALLY IMPERMISSIBLE COMMENT ON THE COURT'S ATTITUDE TOWARD THE GUILT OF PETITIONER?

STATEMENT OF THE CASE

I

THE CHARGE

On October 28, 1969, an information was filed in the Criminal Court of Record in and for Dade County, Florida. The information was filed pursuant to a grand jury indictment in the same terms, which is the Florida procedure. That information is as follows, (captions and signatures and oath omitted):

> "IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:
>
> Robert Eagan, State Attorney, prosecuting for the State of Florida in the County of Dade, pursuant to that Executive Order of the Governor of Florida, dated June 8, 1969, and recorded with the Clerk of the Circuit Court of Dade County Florida, in Minute Book 1067, at Page 11, Public Records of Dade County, Florida, under oath information makes that;
>
> Tony Giamo did, on the 29th day of February, 1968, in Dade County, Florida, in violation of Florida Statute 838.011, corruptly give to Charles Celona, a public officer and employee, to-wit: a law enforcement officer employed by the Dade County Public Safety Department of Dade County, Florida, and then and there known by the said Tony Giamo to be a law enforcement officer so employed, a thing of value, to-wit:

good and lawful money of the United States of America, with the intent and purpose of influencing the acts and omissions of said public officer relating to his public duties in this, that in consideration of that payment of money, the said Charles Celona would refrain from enforcing the laws of Florida prohibiting prostitution, and would advise the said Tony Giamo of the activities of the Public Safety Department of Dade County, Florida, concerning its investigations and enforcement of the laws prohibiting prostitution."

Petitioner pleaded "not guilty", and the cause went to trial before a jury.

II

THE WITNESSES

The State called three witnesses: Sid Klein, a police officer; Charles Celona, a former sheriff deputy in Dade County, Florida, and Marian Celona, wife of Charles.

No physical evidence was introduced. The State's case rests solely on the testimony of witnesses.

A. KLEIN'S TESTIMONY

Sid Klein testified that he was one of the officers who arrested the Petitioner on this charge at Petitioner's home in Dade County, Florida, the arrest occuring on July 9, 1969, some 17 months after the alleged offense. (R. 86; the symbol "R" with page number refers to the record filed in the District Court of Appeals).

Over objection by Petitioner, repeatedly made, Officer Klein testified to the facts surrounding the arrest and the defendant's supposed difficulty in terms of opening his door to the arresting officer. The Court overruled defendant's objection to this testimony and his Motions to Strike it as irrelevant, immaterial and prejudicial, although the Court then ruled that events after the arrest was effectuated on July 9 were immaterial. (R. 86-90).

Officer Klein did not contribute a word of testimony about the substance of the offense charged here.

The Petitioner moved for a mistrial after Officer Klein testified, on the ground that his "evidence" was immaterial, irrelevant and had no bearing on the substantive offense charged and was highly prejudicial. The Motion was denied. (R. 94).

B. CHARLES CELONA

Thereupon, the State called Charles Celona, a former sheriff's deputy, as its witness.

Before considering the events of the Celona testimony, Petitioner calls to the Court's attention that the information on which this trial proceeded charged Petitioner with a violation of the statute " . . . on the 29th day of February, 1968 . . .". The information does not charge him with an act "on or about" but rather charges a date certain. The prosecution in its opening statement announced to the jury that it could prove the commission of the act on any day within two years before filing of the information. (The Florida Statute of Limitations is 2 years.) The Court

sustained this position over vigorous objection by the defense that the State was bound by the date certain alleged under oath in the information. (R. 79-80), printed as Appendix G hereto.

With this background, Celona took the stand.

Celona testified (over objection and Motion for Mistrial) that in 1968, he took his previous wife to the Bonfire Restaurant and got free food and drink. (R. 105-108). The Court sustained the objections, then overruled it.

He said he took his present wife to the Bonfire about a week after he met her in middle to late January, 1968.

He testified that on the last day of February, he thought in a leap year, that Petitioner Giamo handed him money in an envelope. The testimony is as follows:

> "Q. Was she ever present on any occasion that you can recall when money was transferred from Tony Giamo to you for this protection?
> A. Yes, she was.
>
> Q. Can you recall any specific instance?
> A. Yes, I was not directly told by Mr. Winer, but staying away the busy nights of Friday and Saturday, because everyone knew I was a police officer —
>
> MR. FINE: It is not responsive.
>
> THE COURT: Sustain the objection.

THE WITNESS: I stayed away those nights and picked up the money on Monday into the middle of the month and the end of the month.

On one occasion I was there in the month of February, and it ended on Thursday, the 29th of the month. It was a leap year, I think, but it was a short month, and I came on Thursday and Mr. Radio Winer was sick or was not present, and I called him on the telephone.

Q. (By Mr. Davis) Don't tell us what he said.
A. I called and he said —

Q. Don't tell us what he said.
A. Subsequently I went and picked up the money from Mr. Giamo.

Q. Where did he keep this money?

MR. FINE: This specific occasion?

MR. DAVIS: Let's talk about this occasion and then go to other occasions.

THE WITNESS: There is a little booth on the left as you go in that has a little light and a telephone and on one occasion an envelope was there and on another occasion he handed it to me in an envelope.

Q. (Mr. Davis) What was in the envelope?
A. Money on this occasion." (R. 110-112).

Over objection, Celona testified about other occasions where he allegedly picked up money from Petitioner. (R. 113).

Celona testified on direct that he was a liar. (R. 117). Celona never testified to advising the Petitioner of the activities of the Public Safety Department of Dade County, Florida, concerning its investigation and enforcement of the laws prohibiting prostitution, as charged in the information. The record is devoid of any such testimony.

Celona testified that he ran prostitutes out of the Bonfire Restaurant where Petitioner worked as Maitre D'. (R. 104).

His testimony respecting his refraining from enforcing the laws against prostitution is that his superior made a deal of some unspecified sort with a man named Radio Winer who was the owner of the Bonfire. (R. 102; 149).

There is not a word of testimony in the record that he ever made any deal with Petitioner, or that Petitioner had any interest in the Bonfire other than as an employee, or that Petitioner derived one penny of benefit from Mr. Celona's activities or lack of them or would have suffered one penny of detriment had he done anything otherwise than what he did.

There is not an iota of evidence in the record that Mr. Celona ever was in a position to make a prostitution arrest in the Bonfire and refrained from doing so.

The most that could be said of the evidence is that there were women in the Bonfire Celona thought were prostitutes whom he did not "run out".

On cross examination, Celona admitted that he knowingly violated his oath as a police officer; (R. 126) that he had framed a suspect in at least one case; (R. 129) that he had suppressed information to obtain conviction in testifying; (R. 161) that he quit being a "bad" policeman some six months before he began accusing anyone of anything (R. 133) and during this period, said nothing to anyone about his activities; and that he began to "sing" only after he had been arrested for armed robbery and incarcerated for six days, whereupon he was released. (R. 130). Although he gave a 90 page statement before his release, he did not name the Petitioner therein.

The Court recessed for dinner in the middle of cross examination.

When cross examination resumed after dinner, the money Celona allegedly received from Petitioner on February 29th had jumped out of its envelope because Celona then testified he got just bills. (R. 156). This is significant in light of the testimony of the next witness, Mrs. Marian Celona.

C. MARIAN CELONA

Mrs. Celona was called by the State.

She testified than in February, 1968, she went to the Bonfire with Celona, who said he wanted to talk to Petitioner and he walked up to the Petitioner and Celona gave something to Petitioner — an answer she repeated for the prosecutor at his request. (R. 168-169). Celona then returned to the table and showed her some American money he had in his hand. (R. 169).

Mrs. Celona then changed her testimony to say that she saw Petitioner hand Celona something. (R. 170).

Mrs. Celona was then permitted to testify over objection about another instance when she was seated in a car, and Celona went inside the restaurant, returned and showed her some money. (R. 171). To the objection that the witness could not know what went on behind the door, the Court accepted the argument that this went to weight rather than credibility.

The defense, in cross examining Mr. Celona, attempted to go into the following matters and was prevented from doing so:

The Court ruled (R. 120) that the defense could show that Celona had lied under oath, and that he had been granted immunity in numerous cases. But the Court ruled that the defense could not interrogate the witness as to specific acts or events, only the general testimony as to his character.

The Court was evidently under the impression that in attacking the witness's credibility on cross examination, the defense was restricted to the rules of proof regarding character witnesses. (R. 120, 121). The Court then prohibited the defense from cross examining the witness respecting the facts surrounding his obtaining a contract of immunity in some eighty cases. (R. 134). The Court receded from this ruling to allow the defense to ask one question only about these matters. However, when the prosecution objected and defense counsel indicated that he wished to go further, the Court then prohibited any questions at all in the area. (R. 136).

III

THE SUMMATION

The prosecution having concluded and rested, the defense made its Motions for directed verdict of acquittal and renewed its Motions for Mistrial, all of which were denied. The defense rested and the parties summed up to the jury in their closing statements.

During the prosecution's closing remarks, the following occured:

> "Yesterday, I read to you in my opening statement this information and it set forth certain basic material facts to be established. I assure you his Honor will go over again with you the basic or material facts to be established in this case against Tony Giamo, this Defendant, and I assure you if Mr. Fine's argument was correct — that we have failed to prove some material allegations of this information, you would not be hearing me now. The Judge would be.
>
> MR. FINE: I don't think that is proper.
>
> MR. DAVIS: I think it is proper argument. He attacked the material allegations of the complaint. I think we can explain to the jury that he moved the Court to dismiss and the Court has not dismissed. It is a jury question.
>
> MR. FINE: I have a motion.

THE COURT: Please take the jury out."

A Motion for Mistrial, based upon these statements was promptly made and denied. The prosecution then went on to say:

> "The defense's counsel has talked about this information and about Robert Eagan signing it. He read the last part on this page, but he didn't happen to go over to the last page. He just happened to forget about it. That is the part which says that Robert Eagan, being first duly sworn, says this is based upon an indictment of the Grand Jury of Dade County, Florida.
>
> Twenty three people believed Charles Celona. That's how this information got — are you going to make a Motion?
>
> MR. FINE: Yes." (R. 226-228).

The defense made another Motion for Mistrial, based upon these comments, which was denied.

The jury returned a guilty verdict and petitioner was sentenced to 5 years imprisonment.

All of the questions asserted here were asserted, briefed and argued in both the District Court of Appeal and the Florida Supreme Court.

CONSTITUTIONAL PROVISIONS

Petitioner relies on the following constitutional provisions:

a) Amendment VI to the United States Constitution which provides in pertinent part:

> "In all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation; to be confronted with the witnesses against him . . ."

b) Amendment XIV to the Constitution of the United States, which provides in pertinent part:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . ."

ARGUMENT

I

PETITIONER WAS NOT CONVICTED OF A SPECIFIC CHARGE IN CLEAR VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

The information charged Petitioner with one act of bribery on February 29, 1968 — leap year day.

However, the case was tried on the theory that the offense need not be proven on the date certain laid in the

information, but could be proven on any date within the period of the statute of limitations.

The state then went on to introduce, over Petitioner's objection, evidence of similar offenses on other days.

Of which offense was Petitioner convicted?

The problem was accurately treated in *People vs. Morrison*, 202 P. 348 at 349 (Cal. 1921):

> "Where the state is allowed such exceptional latitude in making its proof and avails itself of this privilege, a verdict might be rendered although only a part of the jury believe the defendant guilty of each separate offense, or under such circumstances the jurors might not believe the defendant guilty of any single offense but find him guilty because of the general evidence of continuous crime: also, in such a case, the defendant could not know as to what particular offense, out of many that were testified to, he was placed upon trial. When one of these conditions exist, the variance is fatal."

In *Adjmi vs. State*, 154 So.2 812, (Fla. 1963) the Florida Supreme Court said, at p. 817:

> "It is apparent that the Petitioners were charged in a single court with a single act of grand larceny by false pretense. The State put in evidence in proof of fourteen (14) separate offenses of larceny by false pretenses. Upon appropriate motions to compel an election, the

> court declined to require the State to choose which single act it would rely on for conviction. The jury verdict is general and it is impossible to ascertain and determine upon which single act that verdict rests. Under the settled law of this State, the Petitioners are entitled to an absolute discharge."

Adjmi has not been overruled and provides the controlling rule of law in Florida.

This court has said that sending an accused to prison for an offense that was never charged constitutes a denial of due process. *Garner vs. Louisiana*, 368 U.S. 157, 82 Sup. Ct. 248, 7 L.Ed.2 207 (1961).

In *Thompson vs. Louisville*, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2 654 (1960) this court undertook review of a $20 fine in a Municipal Court, reversing and saying conviction on a charge not made would be a sheer denial of due process. See also *De Jonge vs. Oregon*, 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278 (1937); *Cole vs. Arkansas*, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948).

In *Waller vs. Florida*, 397 U.S. 387, 90 S.Ct. 1184, 25 L.Ed. 435, (1970) this court held that conviction in a Florida Municipal Court barred a second felony prosecution for the same act.

It is then the law that Petitioner cannot be convicted of a crime not charged. He cannot be prosecuted a second time for any specific act. He cannot, under Florida law, be convicted by general verdict of one act charged against him where several acts are put in evidence against him.

Here, however, he is convicted on a general verdict and sent to jail for five years for what? An act of bribery on February 29? February 28? Or one of the other acts testified to?

This case goes to the guts of the requirement in the Federal (and Florida) Constitution that an accused must be told of the charge against him and convicted, if at all, only on proof of that charge and no other.

II

THE PROSECUTOR MADE THE GRAND JURORS WITNESSES AGAINST PETITIONER.

The case at bar rests solely on the credibility of Charles Celona. In closing, the State told the jury that 23 people on the grand jury believed Charles Celona. Petitioner is entitled to confront the witnesses against him; he certainly never confronted the 23 witnesses to Charles Celona's credibility adduced by the prosecution in closing argument.

In *Parker vs. Gladden*, 385 U.S. 366, 87 S.Ct. 468, 17 L.Ed.2 420 (1966) this Court held that when a bailiff expressed to the jury his view that the defendant was guilty, the defendant's right to confrontation was violated.

Here, the prosecutor invoked the twenty three members of the grand jury which indicted Petitioner to establish his guilt. This case is far more serious than that of the bailiff, and further opens the door to the use of the grand jury to prove guilt.

III

THE PROSECUTOR'S COMMENTS ON THE JUDGES VIEW OF THE CASE WERE IMPERMISSIBLE.

If the *Judge* had told the jury:

> "If the prosecution had failed to prove some material allegation of the case, you wouldn't be here now. The defense has made motions to dismiss this case and I denied them".

that comment would certainly be so prejudicial as to deny due process and require reversal.

Here, the remark was made by the state as and for a representation of the Judge's attitude. They are just as improper and just as prejudicial.

This Court has not ruled on whether a court's comments violated the fourteenth amendment or whether the State's comments on the court's position do so. This question should be settled.

CONCLUSION

A Writ should issue and this case should be heard on the merits.

Respectfully submitted,

SHALLE STEPHEN FINE
Attorney for Petitioner
1237 City National Bank Building
Miami, Florida

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was air mailed to The Honorable Robert Shevin, Attorney General, Tallahassee, Florida, this 18th day of October, 1971, postage prepaid.

SHALLE STEPHEN FINE

APPENDIX A

BENCH DOCKET
Criminal Court of Record
Dade County, Florida

(Filed May 15, 1970)

STATE OF FLORIDA

VS.

TONY GIAMO

CHARGE, BRIBERY Case No. 69-6141

JUDGMENT

It appearing unto this Court that you TONY GIAMO have been regularly tried and convicted of BRIBERY.

IT IS THEREFORE THE JUDGMENT of the law and it is hereby adjudged that you are and stand convicted of the offense as above set forth.

DONE AND ORDERED in open Court at Miami, Dade County, Florida, this 15th day of May A.D. 1970.

Murray Goodman
Judge

APPENDIX B

NOT FINAL UNTIL TIME EXPIRES
TO FILE PETITION,
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

JANUARY TERM, A.D. 1971

CASE NO. 70-536

TONY GIAMO,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

Opinion filed February 16, 1971.

An Appeal from the Criminal Court of Record for Dade County, Murray Goodman, Judge.

Shalle Stephen Fine, for appellant.

Robert L. Shevin, Attorney General, and Melvin Grossman, Assistant Attorney General, for appellee.

Before PEARSON, C. J., and CHARLES CARROLL and SWANN, JJ.

PEARSON, Chief Judge.

The appellant was charged by indictment and information filed pursuant thereto with the crime of bribery. He was tried before the court with jury and found guilty. He has appealed the judgment and sentence of five years in the state penitentiary to this court.

Appellant has presented seven points on appeal. The first challenges the sufficiency of the information because it was signed by a state's attorney assigned to the 11th judicial circuit by executive order pursuant to F.S. §27.14. This point has been decided by this court adversely to appellant's position. Hart v. State, 144 Fla. 409; 198 So. 120 (1940); State ex rel. Amaro v. Goodman, Fla. App. 1970, 231 So.2d 271.

The remaining points claim error requiring reversal for a new trial because of evidentiary and proceedural rulings during the progress of the trial. We turn first to the rulings on evidence. It is urged that the testimony of Officer Klein relative to appellant's actions at the time of his arrest was immaterial. The law has been established in this state that such evidence is material. See Carr v. State, 45 Fla. 11, 34 So. 892 (1903); State v. Young, Fla. 1968, 217 So.2d 567. Next it is urged that although the state proved the criminal actions of the defendant on the date set out in the information it was reversable error to allow evidence of similar acts preparatory to and subsequent to the bribery proved. This evidence was admissable under the rule laid down in Williams v. State, Fla. 1959, 110 So.2d 654.

Turning now to the proceedural rulings which are made points on appeal, we find no reversable error. Appellant urges that he was denied the right to fully cross-

examine one of the state's witnesses. The record does not support this conclusion. The limitations imposed upon cross-examination were proper in order to prevent the trial from being converted into a trial of the state's witness. Appellant's right to due process was in no way impaired. See Matera v. State, Fla. App. 1969, 218 So.2d 180.

The appellant has presented a question concerning references upon voir dire examination to previous cases involving testimony by the state's witness, Charles Celona. No assignment of error is directed to any ruling by the trial court and our examination of the record convinces us that no prejudice resulted from the references made.

The last point to be discussed raises a question as to the prejudicial effect of specified remarks made by the prosecuting attorney during closing argument. Appellant objected and then moved for a mistrial because the prosecuting attorney made an improper reference imputing probative value to the fact that the information was based upon a grand jury indictment. The court promptly and fully instructed the jury that the argument was improper and not to be considered. He reminded the jury of their duty to decide the case only upon the evidence before them. In view of the discretion which is exercised by a trial judge in such matters, we hold that no error was committed in denying appellant's motion for a mistrial. See Kelly v. State, Fla. App. 1967, 202 So.2d 901.

Having examined each point presented and finding no reversable error, the judgment and sentence are affirmed.

Affirmed.

APPENDIX C

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1971
FRIDAY, MARCH 26, 1971

CASE NO. 70-536

TONY GIAMO,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

Counsel for appellant having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

WILLIAM P. CARTER

Clerk District Court of Appeal,
Third District

By /s/ Signature illegible

Chief Deputy Clerk

cc: Shalle Stephen Fine
Melvin Grossman
/h

(The Mandate in the above styled cause has today been issued and mailed to the Clerk of the Criminal Court of Record for Dade County, Florida)

APPENDIX D

FLORIDA APPELLATE RULE 4.5(c)(6)

• • •

The petition for certiorari under this rule shall be filed in the Supreme Court within 60 days from the rendition of the order, decision or judgment of the district court of appeal. The petition shall set forth briefly and clearly the grounds for invoking jurisdiction of the Supreme Court and the facts relied upon for the issuance of the writ. Unless the district court shall otherwise direct for good cause shown after notice and hearing, a petition for certiorari filed in the Supreme Court within 15 days from the date of the filing of the order, decision or judgment sought to be reviewed or within 15 days from the date of the disposition of a petition for rehearing shall automatically stay further proceedings in the district court and the trial court until the disposition of said petition by the Supreme Court; otherwise such petition for certiorari shall operate as a stay of such proceedings only upon the order of the Supreme Court or the Chief Justice after due notice to the adverse party.

• • •

APPENDIX E

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1971

TUESDAY, JUNE 22, 1971

CASE NO. 41,012
DISTRICT COURT OF APPEAL, THIRD DISTRICT

TONY GIAMO,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5(c)(6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

CARLTON, Acting C.J., ADKINS, BOYD, McCAIN and DEKLE, JJ., concur

A True Copy

TEST:

/s/ Sid J. White
Sid J. White
Clerk Supreme Court.

/s/ Signature illegible
Chief Deputy Clerk

cc: Honorable William J. Carter
Honorable J. F. McCracken
Honorable Murray Goodman, Judge
Honorable Shalle Stephen Fine
Honorable Joel D. Rosenblatt

APPENDIX F

[TITLE OMITTED]

On consideration of Petition for Rehearing filed by Attorney for Petitioner,

IT IS ORDERED by the Court that said petition be, and the same is hereby, denied.

A TRUE COPY,

TEST:
/s/ Sid J. White

SID J. WHITE
CLERK SUPREME COURT

/s/ Signature illegible
Chief Deputy Clerk

(I have today mailed to the District Court of Appeal, Third District, Order of June 22, 1971, in the above cause)

APPENDIX G

This is signed by R. Eagan, Public Safety Department, Miami, Florida, and filed with J. F. McCracken, Clerk of the Criminal Court of Record in and for Dade County, Florida.

I call your attention to the fact that it was filed on the 28th day of October, 1969. That is last October. I want to say that the date of the 28th of Feburary, in and of itself is no great significance, as his Honor will tell you; that you find from the evidence that this occurred two years prior to the time this information was filed.

We are talking about any offense that may have occurred two years prior.

MR. FINE: Just a minute. That information —is that in your information? This information states—

THE COURT: Ladies and gentlemen of the jury, I ask you to retire to the jury room for a moment.

(Thereupon, the jury retired from the courtroom.)

(The following proceedings were had outside the hearing of the jury:)

MR. FINE: I am sorry to interrupt his opening statement, but I cannot let that go by.

The information doesn't say on or about. It says Febraury 29, 1968, and they are bound by Febraury 29, 1968. We are entitled to rely on that date. It has not been drawn as an on or about information. It is the date they alleged; that is the date that we are prepared for and that is the date we wish to defend against, and no other time.

MR. DAVIS: The bill of particulars is to set forth to the defendant that a date within a certain period of time can be allowed by the Court.

THE COURT: Is there such a bill of particulars?

MR. FINE: Of course there is not. We relied on the information.

MR. DAVIS: The information is filed as of that date and there is a two-year statute of limitations. If he wanted to narrow it down, it was incumbent upon him to ask for it.

MR. FINE: The information states a specific date of February 29, 1968. They should have used that date if they wanted to use it. I have the particulars, and it is February the 29th.

THE COURT: Objection overruled.

* * *